Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 945 of 2001

The National Insurance Company Ltd.
Rishikesh, Dehradun. . **Appellant.**

Versus

1. Km. Ragani & 2 others. … **Respondents.**

Mr. Manoj Tewari, learned counsel for the appellant.
Mr. Tanvir Alam Khan, learned counsel for the respondents.

Coram : Hon'ble P.C. Verma, J.

Hon'ble B.S. Verma, J.

Date August 24, 2004.

(Delivered by Hon'ble Justice B.S. Verma)

This appeal has been preferred under Section 173 of the Motor Vehicle Act, 1988, hereinafter referred to as the Act, against the judgment and Award, dated 9-5-2001, passed by the Motor Accident Claims Tribunal/Addition District Judge, III Fast track Court, Dehradun ***(in short the Tribunal)***, whereby the learned Tribunal has decreed the claim petition and awarded a sum of Rs. 7,00,000/- to the claimant-respondent no.1 along with interest @ 6% per annum from the date of petition till payment, as against the Opposite Parties, appellant and respondent nos. 2 and 3 (the insurer, driver and owner respectively of the offending vehicle.

Brief facts, giving rise to the present appeal, are that on the fateful day, i.e. 19.2.1999, at about 9 a.m., claimant Ragani was going from Claiment Town Dehradun towards Haridwar, having been travelling as pillon rider on Motor bike No. U.P.07-A-2044. When she reached at Shastri Nagar on Hardwar road, near

Rispana Bridge, the offending vehicle Truck No. URM -8307, driven rashly and negligently by its driver coming from the opposite direction, collided with the ill-fated motor cycle, which was being driven very cautiously and at moderate speed by its driver Bharat Veer singh, with the result the leg of the claimant was crushed and damage to the said motor bike was also caused; that the F.I.R. of the accident was lodged by said Bharat Veer Singh and the claimant/respondent no.1 was brought to hospital for treatment and even after long treatment, the claimant could not recover; that the claimant had become permanent disabled due to the injuries caused to her in the aforesaid accident; that the offending truck was being driven by Rajnath, O.P.No. 1/Respondent no.2, owned by O.P. No.3-respondent no.3 and was duly insured with the O.P.No.3, the appellant.

The O.P. No.1/respondent no.2, driver of the said truck, has not put in appearance to contest the petition, hence the case proceeded ex-parte against him.

O.P.No.2/respondent no.3, S.N.Dobhal, the owner of the truck in question, contested the proceedings by filing written statement wherein he has denied the allegations made in the petition and has pleaded that the offending Truck was insured with National Insurance Company, the appellant as per cover note No. 283406 from the period 6.5.1988 to 5.5.1999; that the accident was the result of rash and negligent driving on the part of the driver of motor cycle, therefore, the owner was not responsible for any compensation.

Opposite Party No.3/appellant, National Insurance Company, in its written statement has denied the allegations made in the petition and it has been admitted that the Truck No. URM-8307 was insured with the answering Opposite Party from the period 6.5.1989 to 5.5.1999 by its Rishikesh branch subject to terms and conditions of the Policy. It is also pleaded that the claim

is highly exaggerated, imaginary and baseless; that the claimant just to take monetary benefit has filed the petition; that no cause of action arose to the claimant against O.P.No.3. The O.P. has denied rash and negligent driving of of the truck in question and alleged that the motor cycle was being driven without having a valid driving licence by its driver. The income of the claimant has been challenged. It is further alleged that she has not suffered any permanent disability in the said accident; that the being driven without a valid driving licence, the Insurance Company is not liable for compensation.

On the pleadings of the parties as many as seven issues were framed by the learned Tribunal. The learned Tribunal while discussing Issue No.1, came to the conclusion that the accident in question resulting in grievous injuries to the claimant was caused due to rash and negligent driving by the driver of the offending truck. On issue no.2, the Tribunal found that the income of the injured at the time of accident was Rs. 4500/- per month. On Issue No.3, the learned Tribunal came to the conclusion that the injured has suffered permanent disability to the extent of 60% thereby decided the issue in favour of the claimant-respondent no.1. On Issue No.4, the learned Tribunal found that on the basis of evidence on record, it has to be presumed that the driver of the truck in question was holding a valid driving licence. On Issue No.5, the Tribunal came to the conclusion that the driver of the motor cycle was holding a valid driving licence and there was no negligence on his part. Issue Nos. 6 and 7 relating to relief were taken up together and after considering the entire evidence on record, awarded a sum of 1,75,000/- towards expenses of treatment, Rs. 25,000/-towards future expenses, Rs. 25,000/- towards mental and physical suffering including diminishing the marriage prospect, Rs. 25,000/- towards loss of professional income in additional to Rs. 4,50,000/- towards future loss of income of the injured claimant. Thus, the learned Tribunal has awarded total compensation of Rs. Seven lacs in favour of the claimant-respondent no.1 against the opposite parties

with interest @ 6% per annum with the direction that the entire amount of claim including interest shall be borne by the Insurance Company, the appellant.

Aggrieved by the impugned judgment and Award, the present appeal has been preferred by the Insurance Company before this Court.

It has been contended on behalf of the appellant that the driver of the offending Truck was not holding a valid driving licence and the tribunal has not properly appreciated the evidence on record. It has also been contended on behalf of the appellant that the learned tribunal has erred in assessing the income of the injured and has not considered the material while awarding compensation under various heads.

We have heard the learned counsel for both the parties and have carefully examined the entire evidence on record.

It is most significant to mention here that the grounds of challenge available to the insurer-appellant have been enumerated in sub-Section (2) of Section 149 of the Act and no other ground is available to the Insurance Company. Section 170 of the Motor Vehicles Act deals with impleadment of insurer in certain cases. On a careful perusal of the said provisions of law, we are not inclined to accept the contentions raised on behalf of the insurer-appellant, because under the Act, the insurer has no right to challenge the judgment and award passed by the learned Tribunal except on the grounds as enumerated under sub-Section(2) of Section 149 of the Motor Vehicles Act, 1988. The law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged. We are fortified in our view by the Apex Court judgment in the Case of ***"Natiional Insurance Company Ltd. Vs. Nicolletta Rohtagi and others" (2003 (3)T.A.C. 293 (Supreme Court).*** In that case, it has been observed by the Apex Court that ***"even if no appeal is preferred***

under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle". Thus, in view of the law laid down by the Apex Court reported in ***2003(3) T.A.C. 293 (S.C.) (supra),*** which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

Accordingly, the appeal has no merit and deserves to be dismissed.

The appeal is dismissed. No order as to cost.

(B.S. Verma, J.) **(P.C. Verma, J.)**

RCP